Sixth Circuit Precedent

ASYLUM, WITHHOLDING, CONVENTION AGAINST TORTURE

Kamar v. Sessions, 875 F.3d 811 (6th Cir. 2017).

The Sixth Circuit granted the PFR and remanded, concluding that the Board erred in concluding that petitioner failed to establish her burden of proof with respect to her CAT claim because the record compels the conclusion that the Jordanian government acquiesces to honor killings in the form of "involuntary imprisonment" of potential victims. The court also determined that substantial evidence does not support the Board's refusal to find that the Jordanian government is unwilling or unable to help petitioner because providing "protective custody" to potential victims involves involuntary incarceration, which is akin to persecution. Moreover, substantial evidence does not support the Board's decision that it was not more likely than not that petitioner would be subject to persecution on account of her membership in a particular social group because "there is broader societal significance intertwined with the personal retribution."

ADJUSTMENT OF STATUS & WAIVERS

None

BOND

None

CANCELLATION OF REMOVAL

None

CRIMINAL CASES IN THE IMMIGRATION CONTEXT

None

CRIMINAL

United States v. Morris, 885 F.3d 405 (6th Cir. 2018).

The Sixth Circuit determined that Michigan's felony assault statute, M.C.L. § 750.81, is not divisible and is not a crime of violence under the "elements" clause of U.S.S.G. § 4B1.2(a)(1), which is analogous to 18 U.S.C. § 16(a), because it can encapsulate merely offensive, and not harmful touching. The court found that the statute was a crime of violence only under a clause without an analogue in the immigration context.

United States v. Verwiebe, 874 F.3d 258 (6th Cir. 2017).

The Sixth Circuit affirmed the district court's sentence, concluding that petitioner's convictions in violation of 18 U.S.C.§ 113(a)(3) (assault with a dangerous weapon with intent to do bodily harm) and 18 U.S.C. § 113(a)(6) (assault resulting in serious bodily injury) qualified as crimes of violence under the elements clause of U.S.S.G. § 4B1.2(a)(1) (same as 18 U.S.C. § 16(a)). In particular, the court joined the Fifth, Eighth and Tenth Circuits to hold that under *Voisine* the reckless conduct proscribed by 18 U.S.C. § 113(a)(6) amounts to "the use, attempted use, or threatened us of physical force."

Perez v. United States, 885 F.3d 984 (6th Cir. 2018).

The Sixth Circuit held that second degree robbery under N.Y. Penal Law § 160.10 qualifies as a violent felony under § 924(e)(2)(B)(i) of the ACCA, which is analogous to 18 U.S.C. § 16(a), because the New York courts have required a sufficiently high level of force for a conviction under the statute.

OTHER

Trujillo Diaz v. Sessions, 880 F.3d 244 (6th Cir. 2018).

The Sixth Circuit granted the PFR, vacated the Board's order denying petitioner's motion to reopen proceedings based on changed country conditions in Mexico, and remanded. The court concluded that the Board abused its discretion when it found that petitioner failed to present prima facie evidence that her fear of persecution, or the threat to her life or freedom, was related to her family membership because the Board discredited facts in petitioner's evidence when there was no explicit finding that the evidence was "inherently unbelievable." Additionally, the court held that the Board abused its discretion in summarily rejecting petitioner's evidence that she could not safely relocate

internally in Mexico and not providing any analysis of the relocation evidence in determining that petitioner failed to present a prima facie showing of eligibility for protection under CAT.

Lopez v. Sessions, 851 F.3d 626 (6th Cir. 2017).

The Sixth Circuit granted the PFR in part for reconsideration of petitioner's NACARA application, and specifically for the Board to determine in the first instance whether the petitioner had "not been apprehended at the time of entry." *See* 8 C.F.R. § 1240.61(a)(1). The Sixth Circuit concluded that although the Board determined that petitioner was captured one mile from the border and thirty-one minutes after crossing, it did not determine whether petitioner was under surveillance prior to crossing the border. The Sixth Circuit relied on its previous holding in *United States v. Ramos-Godinez*, 273 F.3d 820, 824-25 (9th Cir. 2001) to conclude that the petitioner was free from official restraint and had therefore made an entry, unless the government continued to surveil him from the time he crossed the border until the time of his apprehension. The Sixth Circuit therefore remanded for the Board to determine whether petitioner was under official surveillance and had therefore not achieved an "entry" into the United States.